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SUPERIOR COURT
YAVAPAI COUNTY, ARIZONA

2010 MAR -8 AM 8:25

JEANNE HICKS, CLERK
Shaunna Kelbaugh

BY: _____

IN THE SUPERIOR COURT OF STATE OF ARIZONA

IN AND FOR THE COUNTY OF YAVAPAI

STATE OF ARIZONA,

Cause No. P1300CR20081339

Plaintiff,

Division 6

v.

STEVEN CARROLL DEMOCKER,

STATE'S RESPONSE TO DEFENDANT'S
MOTION TO PRECLUDE WITNESSES,
FOR ATTORNEY'S FEES AND FOR
OTHER SANCTIONS, INCLUDING
DISMISSAL OF THE DEATH PENALTY.

Defendant.

The State of Arizona, by and through Sheila Sullivan Polk, Yavapai County Attorney, and her deputy undersigned, hereby submits its Response to Defendant's Motion to Preclude Witnesses, for Attorney's Fees and for Other Sanctions, Including Dismissal of the Death Penalty and asks that the Motion be denied. The State's position is supported by the attached Memorandum of Points and Authorities.

MEMORANDUM OF POINTS AND AUTHORITIES

Defendant's Motion is little more than a restatement of all the other motions to preclude or exclude witnesses and evidence that have been filed in this case. Once again, Defendant's unrelenting and overstated complaints regarding the State's alleged failure to comply with Rule 15 need to be taken in the proper context. As previously stated, the defense team has made it their mission to complain and cry foul each and every time an issue is not addressed to their

1 satisfaction. They persistently point out every so-called deliberate delay and error, regardless
2 of its significance to anything of evidentiary value. They continually accuse the State of being
3 "at best ... incompetent and at worst ... obstructive" ask for "serious sanctions" and now beg
4 the Court to "stop the mockery the State has had of this process."

5 The Yavapai County Attorney's Office undertakes its role in the criminal justice system
6 with the utmost seriousness. This Court is fully aware that the prosecutors in Yavapai County
7 are dedicated to the vigorous, expeditious and fair administration of the criminal law to
8 protect the public and to insure that justice is done. The negative comments made by the
9 defense are little more than undeserved acrimonious rhetoric. Again the State asks the Court
10 to separate the exaggerated accusations from reality and to not be unduly swayed by what
11 amounts to be pejorative accusations regarding the State's disclosure habits in this case.

12
13 ***I. Partial Medical Record of James Knapp***

14 The State spoke to the brother of James Knapp who offered to provide to the State the
15 medical records of his deceased brother that he had in his possession. These are incomplete
16 records from Mayo Clinic. The State has evidence that Mr. Knapp was no where near the
17 Bridal Path residence when Carol was murdered; therefore, Mr. Knapp's medical records
18 cannot be considered relevant to the case at bar and have no evidentiary value whatsoever.
19 Accordingly, there was no duty to disclose them.

20 The State's objection to release of these records to the defense was made in good
21 faith. The records are not material and it appears that the defense's only motive for obtaining
22 the records is to further besmirch the character of a troubled soul who took his own life.
23 However, in an attempt to head off any claim of suppression or "hiding the ball," the State
24 sent these records to the defense team on March 1, 2010.

1 **II. Witness Interviews**

2 The State is fully aware that its list of witnesses is significant, however, given the
3 defense team's consistent requests for preclusion of late disclosed witnesses, or witnesses who
4 may have been removed then re-added, the State is extremely reluctant to remove any other
5 individuals without absolute certainty that that person will not be needed in either its case-in-
6 chief or for rebuttal. The defense team is now asking for attorney's fees because they
7 interviewed two witnesses who had very little, if any, material information to offer and that one
8 supplemental report had not been disclosed prior to an interview.

9
10 "The trial court has great discretion in deciding whether to sanction a party and how
11 severe a sanction to impose." *State v. Meza*, 203 Ariz. 50, 55, 50 P.3d 407, 412 (App. 2003)
12 (citation omitted). In *Meza*, there was a two year delay in the defendant's case reaching trial.
13 The delay was largely a result of the State's delay in providing discovery. The first trial
14 ended in a mistrial and another year and a half passed before the trial court sanctioned
15 additional disclosure violations by suppressing the State's evidence. The State appealed.
16 The Court of Appeal affirmed the trial court's decision to suppress and remanded "with
17 instructions to the trial court to assess, as an additional discovery sanction, the reasonable
18 cost and fees that the defense has incurred as a consequence of the sanctionable conduct of
19 the State." *Id.* at 59-60, 50 P.3d 407, 416-17.
20

21
22 There are no *Meza* violations in the case at bar. Regarding the quickly evaporating
23 time left to interview the State's witnesses, the Court needs to be aware that during late January
24 and early February, a span of nearly three weeks, the defense asked for no interviews
25 whatsoever. There have been no delays in the trial schedule and if there is blame to be
26

1 assigned for failure to complete interviews, it should be appropriately distributed, with the
2 defense shouldering their fair share. Defendant's request for attorney's fees should be denied.

3 **CONCLUSION:**

4 Defendant's unrelenting and overstated complaints regarding the State's alleged failure
5 to comply with Rule 15 must be taken in proper context. The defense team has made it their
6 mission to complain and cry foul each and every time an issue is not addressed to their
7 satisfaction. Moreover, the negative comments made by the defense are little more than
8 undeserved acrimonious rhetoric. Again, the State asks the Court to separate the exaggerated
9 accusations from reality, to not be unduly swayed by what amounts to be pejorative
10 accusations regarding the State's disclosure habits in this case, and deny the latest Motion to
11 Preclude Witnesses, for Attorney's Fees and Other Sanction, Including Dismissal of the Death
12 Penalty.
13

14 RESPECTFULLY SUBMITTED this 8th day of March, 2010.

17 Sheila Sullivan Polk
18 YAVAPAI COUNTY ATTORNEY

19 By: Joseph C. Butner (Fol)
20 Joseph C. Butner
21 Deputy County Attorney

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COPIES of the foregoing delivered this
8th day of March, 2010 to:

Honorable Thomas J. Lindberg
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(via email)

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